

OFFICIAL

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

APPLICATION NO. : 10/018,617 Confirmation No.: 7789
APPLICANT(S) : ANDO ET AL.
FILED : December 17, 2001
ART UNIT : 1625
EXAMINER : Reyes, Hector M.
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**REPLY UNDER 37 C.F.R. § 1.251
AND/OR
PETITION UNDER 37 C.F.R. § 1.181(a) FOR WITHDRAWAL OF
HOLDING OF ABANDONMENT**

Dear Sir:

This paper is responsive to telephonic conversation with Mr. Paul Killas of the USPTO on March 30, 2004, and a telephonic conversation with Ms. Rita Desai on April 20, 2004. Applicants believe that no fee is required for either the reply under 37 C.F.R. § 1.251 or the petition under 37 C.F.R. § 1.181(a). However if a fee or fees is/are required, the Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to deposit account number 23-0455.

Remarks begin on page 2.

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REMARKS

Mr. Paul Killas informed the undersigned in a telephonic conversation on March 30, 2004, that allegedly the USPTO did not receive Applicants' submission mailed August 6, 2003, which was responsive to an Office Action mailed May 7, 2003. Mr. Killas requested that Applicants resubmit the submission. Applicants interpreted this request as meaning that the application had not yet been abandoned by the USPTO, and a submission of a copy of the missing documents would meet the requirements outlined in MPEP § 508.04 ("When a document is missing from an application, Office practice is to call the applicant's representative and request submission (generally by facsimile) of a copy of the missing document."). Mr. Killas did not provide a deadline for reply and the undersigned has received no notice under 37 C.F.R. § 1.251 to supply the copy.

Ms. Rita Desai, who Applicants believe is the supervisor of Examiner Reyes, informed the undersigned in a telephonic conversation on April 20, 2004, that the application had not been abandoned as of that date, but that the application could become abandoned before any reply by Applicants under 37 C.F.R. § 1.251 reached the USPTO's file.

Reply Under 37 C.F.R. § 1.251

As noted above, Mr. Paul Killas informed the undersigned in a telephonic conversation on March 30, 2004, that allegedly the USPTO did not receive Applicants' submission mailed August 6, 2003. Applicants submission mailed August 6, 2003, contained a signed certificate of mailing by first class mail dated August 6, 2003, and a return postcard. Applicants received the return postcard on August 14, 2003, with an OIPE date stamped thereon that indicated that Applicants' submission was received by the USPTO on August 8, 2003.

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Applicants enclose herewith the following items:

- (1) A copy of the return postcard with OPIE's received date August 8, 2003, stamped thereon (1 page);
- (2) A copy of the return postcard as it was mailed by Applicants on August 6, 2003 (1 page);
- (3) A copy of a transmittal form with a signed certificate of mailing by first class mail dated August 6, 2003 (1 page),
- (4) A copy of a Amendment and Response dated August 6, 2003 (25 pages),
- (5) A copy of a return postcard with a USPTO stamp indicating receipt on December 17, 2001 and application no. 10/018617,
- (6) A copy of a certificate of mailing by express mail dated December 17, 2001 (1 page),
- (7) A copy of a transmittal letter concerning a filing under 35 U.S.C. § 371 dated December 17, 2001 (2 pages), and
- (8) A copy of a Form PTO-1449 mailed December 17, 2001 (1 page).

Applicants believe that items (2) to (8) identified above comprise a complete and accurate copy of their submission of August 6, 2003. Applicants are not aware of any papers related to the August 6, 2003, submission of which copies are not enclosed herewith.

In view of the enclosures and above remarks, Applicants request acceptance of the copy of the signed certificate of mailing by first class mail dated August 6, 2003, and the copy of the return postcard with the OIPE date stamp as evidence of the timely receipt by the USPTO of the submission of August 6, 2003, and acceptance of items (2) to (8) identified above as a complete and accurate copy of the submission of August 6, 2003. Accordingly, Applicants

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respectfully request reconsideration of any holding of abandonment because of their belief that there was no abandonment in fact (MPEP § 711.03).

***Petition Under 37 C.F.R. § 1.181(a) For Withdrawal Of Holding Of
Abandonment***

While Applicants believe that the above Reply Under 37 C.F.R. § 1.251 is sufficient to avoid abandonment, the application may have become abandoned after Applicants' telephonic conversation with Ms. Desai. In the event that the application has become or becomes abandoned for failure to timely reply to the Office Action mailed May 7, 2003, Applicants request that this paper be treated as a petition under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment and that the enclosure items (1) to (8) listed above and Applicants above remarks related thereto be considered in support of the petition.

Accordingly in the event that the application has become or becomes abandoned for failure to timely reply to the Office Action mailed May 7, 2003, Applicants hereby petition under 37 C.F.R. § 1.181(a) for withdrawal of the holding of abandonment on the grounds that the application is, in fact, not abandoned because Applicants timely mailed on August 6, 2003, a paper that was responsive to the Office Action mailed May 7, 2003.

Conclusion

In view of the above remarks, the enclosures, and petition, Applicants believe that the application is in condition for continued prosecution and request reconsideration of Claims 4-6, 8-10, 12, 13, 15, 16, 18-20, 22-41, 44-47, 50, and 51 and consideration of Claims 52-93.

The undersigned would welcome a telephone call from the Examiner to discuss any matters related to this case that the Examiner thinks are amenable to resolution by such discussion.

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Respectfully submitted,

Date: April 22, 2004

Claude F. Purchase Jr.
Claude F. Purchase, Jr.
Reg. No. 47,871
Warner-Lambert Company LLC
2800 Plymouth Road
Ann Arbor, MI 48105
Tel. (734) 622-1692
Fax (734) 622-1553